

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 19552 of 2015 (T)  
-----

PETITIONER(S) :  
-----

LALJYOTHI S,  
W/O.LALSYAMNATH V.J., VRINDAVANAM,  
PANANGADU, VENGANOOR P.O., THIRUVANANTHAPURAM- 695 523.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :  
-----

1. STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
HEALTH & FAMILY WELFARE DEPARTMENT SECRETARIAT,  
THIRUVANANTHAPURAM- 695 001.
2. THE DIRECTOR OF MEDICAL EDUCATION,  
DIRECTORATE OF MEDICAL EDUCATION,  
THIRUVANANTHAPURAM- 695 001.
3. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,  
THIRUVANANTHAPURAM- 695 001.
4. THE PRINCIPAL.  
PMS COLLEGE OF DENTAL SCIENCE & RESEARCH CENTRE,  
GOLDEN HILLS, VATTAPPARA, THIRUVANANTHAPURAM- 695 029.
5. THE MANAGER,  
PMS COLLEGE OF DENTAL SCIENCE & RESEARCH CENTRE,  
GOLDEN HILLS, VATTAPPARA, THIRUVANANTHAPURAM- 695 029.

\* ADDITIONAL R6 IMPEADED

6. DR.SANGEETHA SIVAJI, STUDENT,  
ORAL AND MAXILLOFACIAL SURGERY,  
GOVT. DENTAL COLLEGE, THIRUVANANTHAPURAM.

\* ADDITIONAL R6 IS SUO MOTU IMPEADED AS PER ORDER DATED 02.07.2015.

R1 TO R3 BY SPL.GOVERNMENT PLEADER SRI.P.K.SANTHAMMA  
R4 BY SRI.KURIAN GEORGE KANNANTHANAM (SENIOR ADVOCATE)  
ADV. SRI.TONY GEORGE KANNANTHANAM  
ADDL.R6 BY ADVS. SMT.SHALEENA RAJAN  
SMT.SREEDEVI KYLASANATH  
SRI.ACHUTH KYLAS  
SRI.M.JAYAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS :**

-----

- EXHIBIT P1: TRUE COPY OF THE PROSPECTUS FOR ADMISSION TO THE POST GRADUATE COURSES IN DENTAL SURGERY (MDS -MASTER OF DENTAL SURGERY) 2015-2016.**
- EXHIBIT P2: TRUE COPY OF THE SELECTION MEMO ISSUED TO THE PETITIONER.**
- EXHIBIT P3: TRUE COPY OF THE CATEGORY/COMMUNITY WISE LIST.**
- EXHIBIT P4: TRUE COPY OF THE NOTIFICATION DATED 30.05.2015.**
- EXHIBIT P5: TRUE COPY OF THE DISTRIBUTION OF MDS SEAT SPECIALITY & COLLEGE WISE FOR GOVERNMENT DENTAL COLLEGES AS ON 16.05.2015.**
- EXHIBIT P6: TRUE COPY OF THE JUDGMENT DATED 12.06.15 IN W.P.(C).NO.16423/2015.**
- EXHIBIT P7: TRUE COPY OF THE NOTIFICATION DATED 23.06.2015.**
- EXHIBIT P8: TRUE COPY OF THE PRESS NOTE DATED 26.06.2015.**

**RESPONDENT(S)' EXHIBITS :**

-----

- EXHIBIT R6(A): A TRUE COPY OF THE NOTIFICATION DATED 23.06.2015 ISSUED BY R3 FOR ALLOTMENT OF SC/ST CANDIDATES.**
- EXHIBIT R6(B): A TRUE COPY OF THE NOTICE DATED 26.06.2015 ISSUED BY R3 FOR ALLOTMENT OF SC/ST/OEC/GENERAL MERIT CANDIDATES.**
- EXHIBIT R6(C): A TRUE COPY OF THE ALLOTMENT MEMO ISSUED BY THE R3 TO THE ADDITIONAL 6TH RESPONDENT.**
- EXHIBIT R6(D): A TRUE COPY OF THE LETTER DATED 29.06.2015 OF THE 3RD RESPONDENT TO THE PRINCIPAL, GOVT.DENTAL COLLEGE THIRUVANANTHAPURAM TO ADMIT THE ADDITIONAL 6TH RESPONDENT.**
- EXHIBIT R6(E): A TRUE COPY OF THE NOTIFICATION DATED 03.06.2015, ISSUED BY THE 3RD RESPONDENT AFTER CANCELLATION OF THE 3RD RESPONDENT AFTER CANCELLATION OF THE FIRST ROUND ALLOTMENT FOR THE PG(MDS) COURSES, KERALA 2015, FOR REVISED COUNSELLING.**
- EXHIBIT R6(F): A TRUE COPY OF THE ALLOTMENT OF THE CANDIDATES IN 4TH RESPONDENTS COLLEGE BY THE COMMISSIONER OF ENTRANCE EXAMINATIONS SHOWING PETITIONER'S FEE EXEMPTION.**
- EXHIBIT R4(A): TRUE COPY OF THE AGREEMENT DATED 06.04.2015 EXECUTED BY PETITIONER'S MANAGEMENT AND GOVERNMENT.**

**WP(C).No. 19552 of 2015 (T)**  
-----

**EXHIBIT R4(B): TRUE COPY OF THE ORDER DATED 18.04.2015 OF HEALTH & FAMILY WELFARE (S) DEPARTMENT.**

**EXHIBIT R4(C): TRUE COPY OF THE ORDER DATED NIL, OF THE ADMISSION SUPERVISORY COMMITTEE.**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

**K. VINOD CHANDRAN, J.**

=====

**W.P.(C) No.19552 of 2015**

=====

**Dated this the 7<sup>th</sup> day of August, 2015**

**J U D G M E N T**

The petitioner is aggrieved with the fact that the petitioner though a Scheduled Caste candidate high up in the rank was not granted the vacancy set apart for a SC candidate in the P.G. Dental course in the Government college by the 3<sup>rd</sup> respondent. The petitioner admittedly is a person who obtained the 5<sup>th</sup> rank among the SC candidates. The 1<sup>st</sup> rank holder is said to have been admitted in the All India Quota. The 2<sup>nd</sup> rank holder was the beneficiary of Ext.P6 judgment. Rank numbers 3 and 4 did not turn up for counselling. In such circumstance, one seat set apart for SC is entitled to be allotted to the petitioner, is the contention.

2. The entire controversy arose since, in a writ petition filed in the year 2013, there was an interim order reserving one

W.P.(C) No.19552 of 2015

seat for the petitioner therein; (W.P.(C) No.30863 of 2013). The claim in the said writ petition was that, the petitioner belonged to a Scheduled Tribe. One another person, specifically the 2<sup>nd</sup> rank holder in the admissions was also before this Court claiming allotment to the ST vacancy, if the petitioner in W.P.(C) No. 30863 of 2013 would not be eligible to be treated as an ST candidate, since then, there being no other available ST candidates, the seat had to be conceded to the SC candidates.

3. This Court considering the expediency; heard W.P. (C)No. 30863 of 2013 and dismissed it by Ext.P6 judgment dated 12.06.2015. The claim of the other petitioner (W.P.(C) No. 16423 of 2015), being the 2<sup>nd</sup> rank holder, was directed to be considered by the Government. The Government considered the same and granted that seat to the 2<sup>nd</sup> rank holder among the SC candidates, since there were no other ST candidates eligible to be allotted in that seat.

W.P.(C) No.19552 of 2015

4. The petitioner who had by then got herself admitted to the 4<sup>th</sup> respondent college, approached the Commissioner on 29.06.2015 with a claim to the said seat. However, the same was declined for reason of there being no, No Objection Certificate and Transfer Certificate from the 4<sup>th</sup> respondent, as also the original certificates which were in the custody of the 4<sup>th</sup> respondent. The petitioner claims the seat which according to her is rightfully due to her as the next rank holder among the SC candidates.

5. The learned Special Government Pleader (SC & ST) however would contend that the petitioner had not approached this Court in time. The admissions were over earlier and there being no eligible SC candidate, the said seat was conceded to another reserved community being the Other Eligible Community (O.E.C) and the said candidate had also joined. The candidate who has now been admitted has been impleaded as

W.P.(C) No.19552 of 2015

the additional 6<sup>th</sup> respondent herein.

6. The controversy centres around whether the petitioner ought to have been given the certificates by the 5<sup>th</sup> respondent insofar as the petitioner was entitled to be allotted to a Government College as per the vacancy which fell due, as is provided in the prospectus. The learned counsel for the petitioner would contend that since the allotment is to a Government College, the petitioner, who obtained admission in the Self-Financing College [for brevity "SFC"], be allotted the seat, if present physically for the allotment. She in fact did appear for the allotment; but, however, was denied the same since the 5<sup>th</sup> respondent, to which she was admitted, refused to give her the possession certificate (of the original certificates) as stipulated in the prospectus. The petitioner claims that she is prejudiced, insofar as she having obtained a rank 209 in the general merit, while the additional 6<sup>th</sup> respondent, whose rank

W.P.(C) No.19552 of 2015

was 358, is now admitted to a Government College while the petitioner has to languish in a SFC.

7. The learned Government Pleader, however, would submit that the aforesaid situation arose only in the circumstance of there being an interim order, which reserved one seat to the Scheduled Tribe and the same having been permitted to be filled up only after the entire allotment process was over. The last date for admission to Government Colleges was 30.05.2015 and the last date for admission to SFCs was 10.06.2015. The petitioner who got admission in the Government merit seat in a SFC could not have relinquished her seat after the admission process is over, is the argument.

8. The additional 6<sup>th</sup> respondent also would rely on the terms of the prospectus to sustain her admission. The 5<sup>th</sup> respondent-College would contend that, going by the specific terms of the prospectus the petitioner could not have asked for a

W.P.(C) No.19552 of 2015

possession certificate, since any relinquishment of a seat in the SFC after the last date of admission would result in liquidated damages being mulcted, as liability.

9. What is to be emphatically noticed is, the last date for admission to the Government College being 30.05.2015 and the SFC's being 10.06.2015. By virtue of an interim order in a writ petition, one of the seats in the Government Colleges, which ought to have been filled up with a Scheduled Caste candidate, remained vacant. The interim order itself was passed on 29.03.2015. Subsequently, the writ petition was heard along with another writ petition and the writ petition in which the reservation was made, was dismissed. The other writ petition, as is noticed above, was filed by a Scheduled Caste candidate who claimed the reserved seat; if no other person in the Scheduled Tribe category were available. This Court having dismissed the writ petition in which there was a reservation of one seat; that

W.P.(C) No.19552 of 2015

seat fell vacant and in that context directed the reserved seat to be allotted to the next eligible candidate. The reserved seat for MDS Orthodontics, was allotted on 26.06.2015 to Dr.Arun R., being a Scheduled Caste candidate, who had earlier obtained admission in the Government Dental College, Thiruvananthapuram in M.D. Oral & Maxillofacial Surgery. The said allotment having been relinquished that seat then fall vacant, the allotment to which is the bone of contention in the present writ petition.

10. The petitioner having been admitted in an SFC in a Government merit seat, could not have sought for the said allotment. There being no other Scheduled Caste candidate available, the seat was conceded to a candidate belonging to the Other Eligible Community (OEC), the additional 6<sup>th</sup> respondent. The prospectus produced at Exhibit P1, by Clause 12(B)(v), specifically prohibited any candidate who took admission to a

W.P.(C) No.19552 of 2015

MDS seat in a SFC to leave such seat even if they get admission to Government colleges, if it is after the last date for admission to SFCs. Any request for transfer to Government Dental College after such allotment to SFC was also prohibited. Any person who discontinues from a SFC after admission by Clause XIII(2)(a) is liable to pay liquidated damages of Rs.20 lakhs (Rupees twenty lakhs) and any re-allotment could be considered only after such payment as per Clause XV.

11. True, the petitioner is prejudiced, since the allotment has been delayed and if a proper allotment had been made before the admissions were closed, probably the petitioner would have secured an admission in the seat to which now the additional 6<sup>th</sup> respondent has been admitted. As rightly pointed out by the learned counsel for the petitioner, the petitioner has been prejudiced insofar as she having sought for an allotment in the SFC; failing which she would have lost one year. Definitely in

W.P.(C) No.19552 of 2015

making such choices, each would have his/her own considerations and by reason of such choices, some would be denied of certain benefits arising thereafter and some others would be conferred with an advantage. However, the terms of the prospectus being very clear, the petitioner, who got herself admitted in a Government merit seat, in a SFC, cannot later on seek an admission in the Government Medical College by reason only of the fortuitous circumstance of a seat having fallen due in a Government College. In such circumstances, going by the prospectus, the petitioner is not entitled to be considered for the seat which fell vacant due to the consequence of Exhibit P6 judgment.

The writ petition, hence, would stand dismissed. No costs.

**Sd/-  
K. VINOD CHANDRAN,  
JUDGE**

SB

// true copy //  
P.A to Judge.